

STATE OF MICHIGAN  
COURT OF APPEALS

---

TRACY DRAKE, Personal Representative of the  
Estate of ROBERT DRAKE, Deceased,

UNPUBLISHED  
November 20, 2007

Plaintiff-Appellant,

v

No. 270225  
Jackson Circuit Court  
LC No. 03-001785-NH

AMY SCHANTZ-RONTAL, M.D., ROLANDO  
BEREDO, M.D., DOWNTOWN MEDICAL,  
P.L.L.C., VASUDEV ANANTHRAM, M.D.,  
SADASIVA REDDY, M.D., JACKSON  
RADIOLOGY CONSULTANTS, P.C.,  
TIMOTHY MURRAY, M.D.,  
CHAKRAVARTHY KANDURU, M.D., and W.A.  
FOOTE MEMORIAL HOSPITAL,

Defendants-Appellees.

---

Before: Talbot, P.J., and Fitzgerald and Kelly, JJ.

FITZGERALD, J. (*dissenting*).

I respectfully dissent.

In my opinion, the trial court's order striking all of plaintiff's expert witnesses as a sanction for failing to comply with discovery was an abuse of discretion. Because of the importance of expert testimony in medical malpractice actions, the trial court's order resulted in the dismissal of plaintiff's lawsuit. Although striking witnesses is an appropriate sanction in some cases, it is important to remember that the policy of this state favors the meritorious determination of issues. *Tisbury v Armstrong*, 104 Mich App 19, 21; 486 NW2d 51 (1992). After reviewing the record, I do not consider plaintiff's counsel's conduct so egregious or defendant's prejudice so substantial that imposing what is, in essence, the most serious sanction available, is justified. See *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990) (discussing the factors to be considered when determining the appropriate sanction). The interests of justice would have been better served by limiting plaintiff to calling only those witnesses identified in her October 25, 2005, and November 17, 2005, correspondences to defendant.

/s/ E. Thomas Fitzgerald